

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BOBBY R. KNOX, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:14CV147
	)	
UNITED STATES OF AMERICA, et al.,	)	
	)	
Respondent.	)	

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted what purports to be a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. This Motion cannot be further processed for the following reasons:

1. Petitioner does not report having any conviction in federal court. In fact, Petitioner admits throughout his submission that he has no federal conviction. Instead, it appears that he is filing his Motion preemptively in case he incurs such a conviction in the future. It is not clear why he believes that such a conviction could occur and, so far as the Court is aware, he is not facing federal charges in this District. Therefore, he has no federal conviction to attack and a Motion under § 2255 is not proper.
2. Petitioner's only request for relief is that he be released from his state sentence. However, he cannot attack his state conviction or sentence under § 2255. Instead, he would have to bring any such claims in a habeas petition under 28 U.S.C. § 2254.

Because of the nature of his filing, this particular Motion will be treated as a habeas petition under § 2254, but dismissed without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to

proceed *in forma pauperis*, and otherwise correcting the defects noted. The Court has no authority to toll the statute of limitation, therefore it continues to run, and Petitioner must act quickly if he wishes to pursue this petition. See Spencer v. Sutton, 239 F.3d 626 (4th Cir. 2001). To further aid Petitioner, the Clerk is instructed to send Petitioner new § 2254 forms and instructions for filing a § 2254 motion, which Petitioner should follow.

*In forma pauperis* status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Petitioner § 2254 forms and instructions.

IT IS THEREFORE RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Petitioner promptly filing a corrected motion on the proper § 2254 forms.

This, the 25<sup>th</sup> day of February, 2014.

A handwritten signature in black ink, appearing to read "Joe L. Webster", is written over a horizontal line.

Joe L. Webster  
United States Magistrate Judge